

11 April 2025

The Office of Treaty Settlements and Takutai Moana: Te Tari Whakatau advice regarding rights under Section 15 of the Ngāi Tahu Deed: Whakapoai South Island Landless Native Reserves (SILNA)

- DOC have made The Office of Treaty Settlements and Takutai Moana: Te Tari Whakatau (Te Tari Whakatau) aware that Ngāti Apa ki te Rā Tō have commented that 24 blocks of West Coast stewardship land should be landbanked as potential forms of redress for the Whakapoai SILNA successors. We have not at this time seen the Ngāti Apa ki te Rā Tō comments.
- Te Tari Whakatau understands that the original beneficiaries to the Whakapoai SILNA block included Ngāti Apa ki Te Rā Tō tupuna. But the Crown needs to await identification of the original beneficiaries and their modern-day successors by the Māori Land Court in accordance with Section 15 of the Ngāi Tahu Deed of Settlement (the Ngāi Tahu Deed).
- The historical account in the Ngāti Apa ki te Rā Tō Deed of Settlement records that the Whakapoai land allocation came about on the back of petitioning from Hoani Mahuika of Ngāti Apa (see clauses 2.27-2.29).

Status of finalisation of redress under Section 15 of Ngāi Tahu Deed

- Indications to Te Tari Whakatau, from officers of the Māori Land Court, are that Māori Land Court officers are working towards the release of an updated working list of Whakapoai SILNA successors by the end of 2026. At this time, Māori Land Court resource on the SILNA research (required under Section 15 of the Ngāi Tahu Deed) is applied to the Toi Toi SILNA research (blocks of land on Rakiura/Stewart Island). After completion of the Toi Toi SILNA and Whakapoai SILNA successor identification work, the Māori Land Court resource on the Section 15 workstream will be applied to successor research for Port Adventure SILNA (also on Rakiura/Stewart Island).
- Under Section 15 of the Ngāi Tahu Deed, the Minister for Treaty of Waitangi Negotiations is to put to the successors – as identified by the Māori Land Court – their options under the Deed. The Whakapoai SILNA successors – once identified – are entitled to either: the original Whakapoai SILNA land (surrounded by the Kahurangi National Park), to be leased to the Minister of Conservation for \$1/year **plus** compensation (as per cl 15.3.2(a)), being market value of lessor interest with lease, deducted from market value of land without lease), **OR** substitute land **OR** alternative forms of redress.
- What land might be available as 'Whakapoai Substitute Land' (under clauses 15.3.2 and 15.3.3 of the Ngāi Tahu Deed) or as other alternative forms of redress, is yet to be worked through by Te Tari Whakatau and other agencies. This piece of policy work will need to take into consideration: the RFRs in favour of Te Waipounamu iwi; the ongoing *Stafford v. Attorney-General* legal proceedings which impact on Crown land in the Spain Award area in the Tasman region; as well as the aspirations of the SILNA successors once identified; and the considerations under the Deed (clauses 15.3.2 and 15.3.3). DOC will have to have a strong role in this process which will be led by Te Tari Whakatau.

Protection Mechanism no longer applies in Te Waipounamu

- As the Crown has settled historical claims with the nine iwi of Te Waipounamu, surplus Te Waipounamu properties are no longer being considered through the Protection Mechanism for landbanking for use in future Treaty settlement. This is as per Cabinet-approved policy.

DOC interest in the Crown SILNA obligations under the Ngāi Tahu settlement and the identification of alternatives forms of redress in relation to Port Adventure, Toi Toi and Whakapoai

- Te Tari Whakatau also notes that the other untransferred SILNA blocks on Rakiura/Stewart Island – Port Adventure and Toi Toi, also the subject of Section 15 of the Ngāi Tahu Deed and corresponding sections in the Ngāi Tahu Claims settlement Act 1998, are likely of high public conservation value, 9(2)(j) Those landlocked Rakiura blocks are likely currently perceived by the public to be public conservation land although they are not. The original Whakapoai SILNA land is only available to the SILNA successors on the basis it be rented back to the Minister of Conservation for \$1/annum for inclusion in the Kahurangi National Park. It is legally accessible by unformed public road, and physically accessible by the public only on foot/bike by way of the Heaphy Track.
- As such, there is a DOC interest in assisting the Crown to find alternative forms of redress for the successors to the three untransferred SILNA blocks – Whakapoai (Heaphy Track), Port Adventure (Rakiura), Toi Toi (Rakiura).

Properties commented on by Ngāti Apa ki te Rā Tō

- Te Tari Whakatau note that DOC are considering making iwi comment on the West Coast stewardship land review publicly available with iwi-consent. In addition, we also recommend, in light of the comments of Ngāti Apa, that consideration be given to recording (potentially through Napalis) that the 24 properties may be subject to consideration under the SILNA provisions of the Ngāi Tahu settlement as potential alternative forms of redress for Whakapoai SILNA successors, subject to discussion with Te Runanga o Ngāi Tahu and the SILNA successors (once identified and having established their representation).
- 9(2)(h) We note that the Tribunal has considered 9(2)(h) the SILNA context in its Wai 1090 report (2005). There, the Tribunal was considering claims brought by SILNA landowners who had been allocated the Waimumu Forest land in Southland as compensation for their 19th century land losses. By the time the forest was harvestable and accessible in the 1990's, resource management laws and export controls effectively prohibited the only available land uses which would create economic benefits. The Tribunal found that there had been Treaty breaches in respect of the some of the Crown's actions, but that no prejudice had at that stage occurred. However, it was incumbent on the Crown to take steps to actively protect the claimants' interests 9(2)(h)